

KGRC, Channel 225C1, Hannibal, Missouri.

**DATES:** Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry K. and Cathy M. Price, WKXQ Radio, P.O. Box 196, 123 North Liberty Street, Rushville, Illinois 62681 (Petitioners).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-147, adopted September 7, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-23526 Filed 9-21-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-148; RM-8693]

#### Radio Broadcasting Services; Big Sky, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by George Russell & Associates, Inc. proposing the allotment of Channel 283A to Big Sky, Montana, as that community's first local service. Channel 283A can be allotted to Big Sky without a site restriction at coordinates 45-16-03 and 111-18-04.

**DATES:** Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian M. Madden, Deborah R. Coleman, Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006-1809.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-148, adopted September 8, 1994, and released September 19, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

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For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 260

[Docket No. 950915231-5231-01; I.D. 091495E]

RIN 0648-AI45

#### Privatization of In-plant Seafood Inspections and Related Services

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of inquiry.

**SUMMARY:** NOAA announces that it will change the way it delivers in-plant seafood inspections and related services under the Agricultural Marketing Act of 1946 (the Act). Currently, these services are provided by NOAA employees on a fee-for-service basis which enables NOAA to fully recover the service costs. NOAA is considering that some of these services would no longer be provided directly by NOAA employees, but rather be offered by private parties. This document outlines the action NOAA contemplates to assure that the privatized program conducted under Federal oversight will be the full equivalent of the current program. NOAA is issuing this notice to inform the public of its ideas on restructuring the way it provides services under the Act; to describe the method by which it would assure continued availability of the benefits of these services through private inspectors certified by NOAA; and to invite submission of written recommendations and comments.

**DATES:** Comments must be received on or before November 21, 1995.

**ADDRESSES:** Director, Office of Industry Services, 1315 East-West Highway, Room 12553, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** James W. Brennan, NOAA Deputy General Counsel at (202) 482-3044.

**SUPPLEMENTARY INFORMATION:** Comments should take into account the following criteria that will fundamentally affect the viability of a privatized inspection program: (i) Fair treatment of Government inspectors currently

providing the services; (ii) minimum modification of relationships with customers subscribing to the current program, and assurance that the internal operations of these customers need not be changed to accommodate a privatized system; (iii) continued recognition by foreign governments of official indicia as indicating safety, wholesomeness and acceptability of products to which the indicia are affixed or to which they relate; (iv) acceptance of the integrity of the privatized inspection program by harvesters, processors, wholesalers, retailers and consumers; and (v) likelihood of the continued economic viability of the private entity (or entities) providing the services into the indefinite future.

In furtherance of Administration efforts to "reinvent" and improve the way services are delivered to the public, and to comply with the personnel reductions mandated by the Federal Work Force Restructuring Act, NOAA is considering privatization of inspections and related services for fish and fishery products currently conducted under its voluntary fee-for-service program. By the end of FY 1996, NOAA would discontinue direct involvement by Federal employees in performing these services under authority of the Act (7 U.S.C. 1621 *et seq.*). However, NOAA will retain oversight to maintain public confidence in the continued integrity of the program. One or more qualified entities in the private sector would be officially recognized and authorized by NOAA to provide inspection services. NOAA would no longer conduct inspection services to be performed by Federal and cross-licensed State employees, but would certify the competence of each private entity authorized to provide these services to members of the public.

The current voluntary program has been a notable success. It promotes domestic and foreign commerce in American seafood in several important ways. It is a tool available to exporters to provide a known, reliable assurance that seafood exported from the United States to foreign markets conforms to the agreed contract specifications between the domestic exporter and the foreign purchaser. It provides a governmental assurance of the safety, wholesomeness, and acceptability to officials of other nations, thereby speeding customs clearance at foreign borders. In those countries that require certification from a Federal entity, NMFS certification has routinely satisfied these requirements. The program also serves domestic purchasers at the import, wholesale, retail or consumer level who desire

assurance from a disinterested expert that fishery products in the market place meet appropriate standards, and fishery products that they have purchased meet their requirements. In addition, the official marks (e.g., U.S. Grade A, Packed Under Federal Inspection) associated with this program are often used in the trade and at retail to market the product to its best advantage and allow consumers to choose product of the desired quality. During 1994, the NOAA program inspected more than 984 million lb (446,000 mt) of fishery products for domestic and foreign use.

It is important to foreign governments, in particular, that the assurances conveyed by the voluntary fee-for-service activities under the Act are backed by a disinterested entity of unimpeachable integrity. During 1994, NOAA inspected and certified 156.4 million lb (70,900 mt) of fishery products for export. While the Federal Government may need to retain involvement in providing assurances to foreign governments, many of the services that NOAA currently provides can be assumed by qualified, knowledgeable and disinterested private inspectors, provided that NOAA retains the oversight necessary to foster public confidence in the system of private inspection and related services.

Private inspectors would be required to maintain complete records of their activities under the Act, which NOAA would review as it audits performance under the program. NOAA contemplates that it would charge certified entities a fee to cover the oversight, audit and certification costs.

Prior to privatization, NOAA would amend certain inspection and certification provisions to expand the fee-for-service activities that may be conducted under the Act by persons who are not Federal employees.

The simplest way to privatize these services would be to certify each private person who satisfies applicable qualification standards to perform services under the Act as a private inspector (subject to oversight of NOAA). This approach could result in such a large number of geographically dispersed, qualified inspection firms that the quality of NOAA's oversight would be impaired, thereby affecting the integrity of the system. Furthermore, the size of some firms conducting inspections could be so small that it would raise legitimate concerns that decisions of these firms could be subject to undue influence by a customer who provides a significant portion of their income. Such cases would adversely affect the perceived credibility of the private inspection program by members

of the seafood industry, by consumers and by foreign governments. Such a course of action could also seriously disrupt ongoing activities of existing customers. For those reasons, NOAA has determined that this approach is so unacceptable to customers, consumers, and the domestic industry in general that it would be unworkable.

NOAA believes that a better approach would be the establishment of a private, employee-owned Corporation (the Corporation) that would acquire the program and operate it subject to the oversight of NOAA. NOAA employees currently performing these services could become employees of the Corporation if they so elected, and would acquire an ownership interest therein by means of an Employee Stock Ownership Plan (ESOP). Under this alternative, NOAA would terminate its inspection services and would eliminate its inspector positions soon after the Corporation is established. This option has four important advantages:

(1) Current employees would be treated fairly, (2) customer relations would be fostered, (3) NOAA oversight would be simplified, and (4) the integrity of the program would be maintained. Because NOAA inspectors would be represented in the process of establishing the ESOP and would have a stake in the ownership of the Corporation, the morale and productivity of inspectors would likely be high. Furthermore, ongoing relationships with current customers would not be disrupted. NOAA would deal with one major certified entity, and perhaps a small number of reasonably sized competing entities. Oversight would be far less burdensome this way compared to dealing with a large number of small certified entities. Furthermore, the inspectors employed by the employee-owned Corporation, being former NOAA inspectors, would be familiar with the procedures that will govern the conduct of inspections by private inspectors. These inspectors would also understand the overriding importance of maintaining the integrity of the inspection process.

The ESOP proposal would require more preparatory work in legal/financial areas that are unfamiliar to NOAA, and would perhaps involve greater initial costs to the Government. However, once the infrastructure is in place, the transition should go smoothly and rapidly. The inspectors employed by the Corporation would be highly qualified, as noted above, and these former NOAA inspectors would fully appreciate the necessity for complete impartiality in performing their duties. They would also have a comprehensive knowledge

of the inspection manual used by NOAA that would continue as the standard reference to ensure consistency by all inspectors throughout the program.

NOAA is in the process of contracting for a study of the feasibility of establishing a new Corporation, owned in whole or part by an ESOP, to undertake inspection services. The contractor will be encouraged to seek the views of affected employees, current customers, other members of the seafood industry and consumers.

At this point, NOAA assumes that the study will conclude that the approach contemplated is feasible. However, if the study, discussions with affected or interested persons, or comments resulting from this notice indicate that the five criteria essential for the success of a privatized system are not likely to be met, NOAA will pursue other options. Any option likely to be successful will probably require legislation, and will therefore have to be pursued as a matter of urgency if the deadline of September 30, 1996, is to be met.

In addition to providing services under the Act, the possibility exists that the Corporation could also be authorized to conduct similar services on behalf of other Federal or state agencies engaged in seafood inspection or in quality inspection of other foods, provided suitable arrangements could be made with other interested agencies. This raises the following questions: How should the privatized program mesh with the mandatory seafood inspection program now being operated by the U.S. Food and Drug Administration? Currently, NOAA has memoranda of understanding with FDA which include inspection and research. FDA is converting its inspection regime to one that is based on the Hazard Analysis Critical Control Point (HACCP) principles. Should the Corporation conduct inspections that could qualify under FDA's mandatory program? If so, how should this work? Should consultative services that the Corporation conducts under the NOAA voluntary program include training and technical assistance to facilitate compliance with the FDA mandatory program, especially by small businesses?

In certain areas, NOAA utilizes cross-licensed state and Federal inspectors from the Department of Agriculture to provide inspection services. In order to enhance the success of the Corporation, work that is currently performed by these governmental bodies could be directed to the new Corporation. The Corporation may wish to continue to utilize state or Federal personnel.

NOAA would have no objection to this as long as these individuals meet the qualification standards that will be maintained by NOAA. To facilitate this transition NOAA would recognize a cross-licensed state and Federal inspector who has demonstrated satisfactory performance during the last year in a specific inspection function(s) as a certified entity for such activity(ies) to provide the Corporation with the ability to use these individuals. Future certification of state and Federal employees would be dependent on meeting the previously stated qualification standards.

NOAA contemplates establishing or authorizing the establishment of additional service marks to inform consumers of the official assurances provided by certified private inspectors, to provide other information useful to consumers, and to encourage foreign governments to rely on those logos for the government-backed assurance of safety, wholesomeness and quality. For entry into a foreign country where a governmental certificate may be required as a condition of acceptance by the importing foreign government, NOAA would either countersign the certificate of compliance or retain responsibility for certification for specific countries. In the latter case, NOAA certification would be based upon inspections conducted by the Corporation acting under contract with NOAA. The oversight and standard-setting roles of NOAA could eventually be assumed by a government Corporation. However, in the context of an inspection program conducted by a certified private entity, that must be considered a long-range possibility, not a short-term or medium-term goal.

The Corporation itself would need to comply with practices and standards established by NOAA. Its employees conducting inspections and related services would also be required to meet appropriate standards of education, training, or experience established by NOAA. The major source of qualified employees would be the NOAA employees performing fee-for-service activities under the Act. NOAA currently has 168 inspectors providing inspection services. These inspectors are classified in two personnel series: (1) Consumer Safety Officer (GS-696) series—there are currently 131 NOAA field inspectors in this series (this is the same series as Food and Drug Administration Consumer Safety Officers); and (2) Consumer Safety Inspector (GS-1862)—there are currently 40 NOAA field inspectors in this series. The basic requirements for the two series are as follows:

(1) Consumer Safety Officer (entry level)

A. Bachelor's degree that includes at least 30 semester hours in one or a combination of the following: Biological sciences, chemistry, pharmacy, physical sciences, food technology, nutrition, medical science, engineering, epidemiology, veterinary medical science, or related scientific fields that provide knowledge directly related to consumer safety officer work, or

B. Combination of education and experience—courses consisting of at least 30 semester hours in the fields of study described in A, plus appropriate experience or additional education.

(2) Consumer Safety Inspector (lowest entry level)

A. Successful completion of 2 years of study, which includes at least 12 semester hours in any combination of courses such as those in the agricultural, biological, or physical sciences, food technology, epidemiology, home economics, pharmacy, engineering, or nutrition.

(3) Consumer Safety Inspector (above lowest entry level)

A. Successful completion of a 4-year course of study leading to a bachelor's degree with at least 24 semester hours in any combination of courses in subjects as listed under A; or

B. Specialized experience in work that has provided knowledge of the properties and characteristics of the commodities and substances regulated in the position to be filled, skill in applying proper techniques for collecting samples and performing field tests and examinations, skill in reporting both orally and in writing, and skill in maintaining effective personal contacts. Such experience may be acquired in work such as the following: Food inspector, public health inspector, and quality inspection specialist.

The qualifications of all persons applying for certification would be examined to assure that they meet minimal agency standards of competence. NOAA anticipates that any person who has successfully performed as a Federal Consumer Safety Officer or Consumer Safety Inspector for more than 1 year and has successfully completed the necessary training courses for the activities for which certification is requested would qualify to conduct like services under the program as a certified entity or as an employee of such entity. Periodic review of the qualifications of all certified inspectors, and attendance at approved training courses to keep

current with advances in the art will be required in order to maintain a current certification.

Although the Corporation currently contemplated by NOAA is likely to meet the criteria needed for authorization to provide privatized inspection services, it would not necessarily be the only authorized entity. Other entities could apply to the Secretary of Commerce for authorization, and if they meet applicable requirements, they would be authorized to conduct the services. However, as noted previously, it is assumed that authorization of entities employing a small number of employees would make the system unworkable. Therefore, NOAA contemplates that one of the authorization criteria would be that the applicant must employ a minimum number of certified inspectors, perhaps in the range of 50 to 60. Comments on the number of certified inspectors needed to qualify a firm would be particularly useful. Additionally, NOAA probably would require that an entity authorized under the program could not receive more than a fixed percentage of its annual income from performing these services for any one seafood processor or group of related seafood processors. And, of course, a certified entity could not inspect its own seafood as a Federally certified entity.

Initially, it is contemplated that the private inspectors conduct one or more of the following services under the Act:

- Sampling;
- Determination of essential characteristics;
- Determination of class, quality or condition; and
- Continuous in-plant inspection.

Under the changes contemplated, inspectors probably would not be certified initially to approve HACCP plans. Because of the inherent complexity in approving HACCP plans, the variety of the plans themselves, and the relative novelty of the application of HACCP to seafood quality programs, it is contemplated that approval of HACCP plans will not be delegated until the process of privatization has matured. Under currently approved HACCP plans, firms have assumed significant responsibilities for assuring the safety, wholesomeness and quality of their own products, subject to periodic audits by NOAA. This will continue whether NOAA or a certified entity is responsible for the audit. Monitoring of

approved HACCP programs by qualified certified private inspectors is being considered. Even if it were decided that they would not initially oversee HACCP plans as a certified inspector under the Act, certified private inspectors could assist their customers in designing HACCP programs as a private consultation service in much the same manner as NOAA currently does. Comments on this point are particularly desired.

It is anticipated that functions such as specification and label approval, as well as training functions in specialized activities such as sensory evaluation, will initially be retained by NOAA. The performance of appeal inspections is also considered to be a function that must be retained by NOAA to resolve issues of conflict between a certified entity and a party that requests an inspection service. NOAA will maintain the development of voluntary grade standards, functions associated with agency and trade interests in international activities, and performance of laboratory analyses to ensure the integrity of the NOAA program.

NOAA's role in providing for-fee services not initially included would be reexamined as the program proceeds. Ultimately, it is envisioned that NOAA's role could diminish to the point that it would issue voluntary standards and audit the performance of private inspectors, and, as noted, even those functions may eventually be assigned to a government Corporation or even be privatized if the right vehicle for doing so could be designed.

At first glance, it would seem that the possibility of having a single private entity authorized to conduct most of the services on behalf of NOAA could raise concerns about inflated pricing unless NOAA regulated the prices that could be charged. NOAA does not contemplate doing that for several reasons. Subscription to the service is not mandated by law. Less than 25 percent of the seafood in the domestic market place is now covered by the program; that suggests that the majority of seafood producers find that the value of the current service as a marketing tool does not exceed the cost of participation. It is unlikely that the privatized service would be able to charge fees that significantly exceed fees for similar services under the current program.

NOAA is considering a variation to ease the transition to the privatized system. Under the variation, NOAA would continue existing contracts with customers to provide inspection services but would negotiate a contract with the Corporation to actually conduct these services as a subcontractor to NOAA. (The inspectors employed by the Corporation would likely be the very inspectors who provided the services as Government employees). NOAA would pay the Corporation for services provided and bill and receive payment from the customers. Contracts with new customers would be established between the Corporation and those customers as the need arises. Over the course of the 1-year transition period, the Corporation gradually would assume full responsibility for existing NOAA contracts, on a time schedule that would be mutually convenient to the customers and the Corporation. In addition to offering a phased process, fully transparent to existing customers, this approach may provide a contractual vehicle to allow the transfer of control to the Corporation of some NOAA property currently used by its inspectors. Comments on the desirability of the variation would be helpful.

#### Request for Comments and Views

Affected employees, domestic and foreign consumers, seafood harvesters, processors, traders, retailers, importers and exporters, as well as entities interested in qualifying as certified inspection entities, are invited to submit comments and suggestions on the points discussed above, or any related topic.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

This notice has been determined to be not significant for purposes of E.O. 12866.

Dated: September 15, 1995.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

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